

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

TYRONE JOHNSON,	:	Case No. 1:18-cv-43
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	Magistrate Judge Stephanie K. Bowman
vs.	:	
	:	
MICHAEL HUMPHREY, <i>et al.</i> ,	:	
	:	
Defendants.	:	
	:	

**DECISION AND ENTRY
ADOPTING THE REPORTS AND RECOMMENDATIONS
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 34) AND
TERMINATING THIS CASE IN THIS COURT**

This case is before the Court pursuant to the Order of General Reference to United States Magistrate Judge Stephanie K. Bowman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on January 28, 2019, submitted a Report and Recommendation. (Doc. 34). Plaintiff filed timely objections on February 11, 2019. (Doc. 35).

After reviewing the Report and Recommendation, Plaintiff's objections, and the case record, the Court finds that Plaintiff's objections are not well-taken.

Plaintiff's only specific objection to the Report and Recommendation is that it does not address Plaintiff's motion for default judgment. (Doc. 24). However, the Magistrate Judge's Supplemental Report and Recommendation filed on April 18, 2018 (Doc. 22) was pending when Plaintiff filed the motion for default judgment and therefore Defendants were not in default. Moreover, default has not been entered in this case when

Plaintiff filed the motion for default judgment. “Prior to obtaining default judgment under either Rule 55(b)(1) or Rule 55(b)(2), there must be an entry of default as provided by Rule 55(a).” *See Heard v. Caruso*, 351 Fed. App'x 1, 15 (6th Cir. 2009) (citing 10A Federal Practice and Procedure § 2682, at 13 (3d ed. 1998)). Therefore, Plaintiff's motion for default judgment, even if Defendants were in default, was premature. Accordingly, the Report and Recommendations denial of Plaintiff's motion for default judgment as moot was appropriate.

As the Report and Recommendation correctly found, Plaintiff's complaint contains no facts suggesting Defendants McCroskey, Bell, Rodgers, Eaches, and Osbourne participated in denying Plaintiff any constitutionally protected civil right and therefore all claims against them must be dismissed. (Doc. 34 at 6–12).

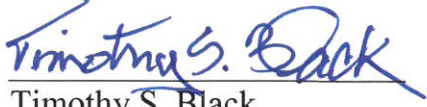
As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that Plaintiff's objections (Doc. 35) should be and are hereby **OVERRULED** and the Report and Recommendation (Doc. 34) should be and is hereby **ADOPTED** in its entirety.

Accordingly, for the reasons stated above:

- 1) Defendants' motion to dismiss (Doc. 26) is **GRANTED**;
- 2) All other pending motions (Docs. 24, 28, 33) are **DENIED as moot**;
- 3) The Clerk shall enter judgment accordingly, whereupon this case is **TERMINATED** from the docket of this Court.

IT IS SO ORDERED.

Date: 2/21/19


Timothy S. Black
United States District Judge